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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,101	01/13/2004	Steven M. Dubinett	G&C 30435.152-US-I1	3604
22462	7590	09/20/2007		
GATES & COOPER LLP HOWARD HUGHES CENTER 6701 CENTER DRIVE WEST, SUITE 1050 LOS ANGELES, CA 90045			EXAMINER UNGAR, SUSAN NMN	
			ART UNIT 1642	PAPER NUMBER
			MAIL DATE 09/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/756,101

Applicant(s)

DUBINETT ET AL.

Examiner

Susan Ungar

Art Unit

1642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 32.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The Amendment filed June 27, 2007 in response to the Office Action of February 27, 2007 is acknowledged and has been entered. Previously pending claim 32 has been amended. Claim 32 is currently being examined.
2. The following rejections are being maintained:

Claim Rejections - 35 USC 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 32 remains rejected under 35 USC 103 for the reasons previously set forth in the action mailed February 27, 2007, Sections 6-7, pages 5-13.

Applicant argues that the references relied upon for their disclosure of SLC teach human SLC while the references relied upon as teaching the other elements of claim 32 teach non-human (murine) models and thus the combination of the human SLC in the WO/038706 and WO 96/06169 disclosures in combination with the murine models in the Kirk, Nishioka, Miller and Lode disclosures will not lead to the claimed invention. The argument has been considered but has not been found persuasive because although each of the references include teachings drawn to murine models, in particular, Nishioka et al, as previously set forth, specifically teach the effective anti tumor treatment of human patients with DCs pulsed with synthetic tumor peptides (see p. 8 of the previous action) and all of WO/038706 and WO 96/06169, Nishioka et al, Kirk and Mule, Miller and Lode provide

motivation and a reasonable expectation of success in substituting the SLCs of WO/038706 and WO 96/06169 for the DCs of Nishioka et al for use in anti-cancer treatment of syngeneic tumors in human patients.

Applicant argues that one of skill in the art would not agree with the Patent Office's assertion that one of skill in the art would have found it obvious to combine disclosures relating to GM-CSF, IL-4, IL-7 or IL-2 with those relating to SLC of WO/038706 and WO 96/06169 to arrive at the claimed invention since those of skill in the art understand that one cannot use different cytokines as functional equivalents of each other. Applicant further argues that given the differences in the activities possessed by the cytokines disclosed in the references, one cannot use a function activity possessed by GM-CSF, IL-4, IL-7 or IL-2 to predict the functional activity of SLC. The argument has been considered but has not been found persuasive because Examiner takes note and the secondary references disclose that each of the cytokines disclosed are known, successful anti-tumor immunomodulatory agents, regardless of their mechanism of action. Given that WO/038706 and WO 96/06169 specifically teach that SLC is an anti-tumor immunomodulatory agent wherein the references are specifically drawn to treating cancer with said immunomodulatory agent, it is clear that the cytokines, all of which are anti-tumor immunomodulatory agents, are functional equivalents each for the other and substitution of one for the other is obvious for the reasons of record.

The arguments have been considered but have not been found persuasive and the rejection is maintained.

5. No claims allowed.

6. All other objections and rejections set forth in the previous action are hereby withdrawn.

7. This action is a **final rejection** and is intended to close the prosecution of this application. Applicant's reply under 37 CFR 1.113 to this action is limited either to an appeal to the Board of Patent Appeals and Interferences or to an amendment complying with the requirements set forth below.

If applicant should desire to appeal any rejection made by the examiner, a Notice of Appeal must be filed within the period for reply identifying the rejected claim or claims appealed. The Notice of Appeal must be accompanied by the required appeal fee.

If applicant should desire to file an amendment, entry of a proposed amendment after final rejection cannot be made as a matter of right unless it merely cancels claims or complies with a formal requirement made earlier. Amendments touching the merits of the application which otherwise might not be proper may be admitted upon a showing a good and sufficient reasons why they are necessary and why they were not presented earlier.

A reply under 37 CFR 1.113 to a final rejection must include the appeal from, or cancellation of, each rejected claim. The filing of an amendment after final rejection, whether or not it is entered, does not stop the running of the statutory period for reply to the final rejection unless the examiner holds the claims to be in condition for allowance. Accordingly, if a Notice of Appeal has not been filed properly within the period for reply, or any extension of this period obtained under either 37 CFR 1.136(a) or (b), the application will become abandoned. This action is a **final rejection** and is intended to close the prosecution of this application. Applicant's reply under 37 CFR 1.113 to this action is limited either to an appeal to the Board of Patent Appeals and Interferences or to an amendment complying with the requirements set forth below.

If applicant should desire to appeal any rejection made by the examiner, a Notice of Appeal must be filed within the period for reply identifying the rejected claim or claims appealed. The Notice of Appeal must be accompanied by the required appeal fee.

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8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. 1.136(a).

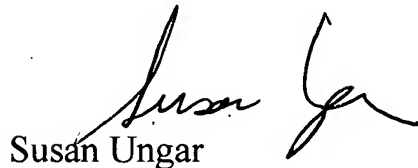
A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE

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OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Ungar, PhD whose telephone number is (571) 272-0837. The examiner can normally be reached on Monday through Friday from 7:30am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shanon Foley, can be reached at 571-272-0898. The fax phone number for this Art Unit is (571) 273-8300.

A handwritten signature in black ink, appearing to read 'Susan Ungar', is positioned above the printed name.

Susan Ungar
Primary Patent Examiner
September 5, 2007